

Judge Settle

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEPHEN M. KELLY,  
SUSAN S. CRANE,  
WILLIAM J. BICHSEL,  
ANNE MONTGOMERY, and  
LYNNE T. GREENWALD,

Defendants.

Case No. CR10-5586BHS

GOVERNMENT'S PROPOSED  
PROTECTIVE ORDER

(UNCLASSIFIED)

This matter is before the Court on the Government's *In Camera, Ex Parte*, Under Seal Motion and Memorandum Seeking Protective Order Pursuant to Federal Rule of Criminal Procedure 16(d)(1) and CIPA § 4 ("Government's Motion for a Protective Order").

By its motion, the government requested that the Court, pursuant to Fed. R. Crim. P. 16(d)(1) and the Classified Procedures Protection Act ("CIPA") § 4, and the applicable law: (1) conduct an *ex parte, in camera* review of the government's submission; (2) authorize the government to redact specified classified information from discovery, that is the Litigation Report and Report of Investigation which were created by the United States Navy and produced to the defendants as discovery in this case; (3) authorize the government to withhold from discovery the information and documents sought in the requests, numbered 1,<sup>1</sup> 3, 4, and 5, submitted to the government in an email on November 4, 2010, by defendant Susan S. Crane, on

<sup>1</sup> The first request, for the production of an unredacted Litigation Report and an unredacted Report of Investigation, was not numbered by the defendants. For ease of reference, it has been referred to as request number "1" herein.

1 behalf of all defendants; and (4) order that the entire text of the Government's Motion for a  
2 Protective Order and the attached declaration and exhibits shall not be disclosed to the defense  
3 and shall be Sealed and preserved in the records of the Court to be made available for all future  
4 review of these proceedings.

5 The Court has carefully reviewed the Government's Motion for a Protective Order, the  
6 attached declaration and exhibits, the Report of Investigation and Litigation Report created by  
7 the Navy and produced in this case, the defendants' discovery requests submitted to the  
8 government by email on November 4, 2010, as well as the defendants' "Motion to Immediately  
9 Dismiss Charges," filed on October 8, 2010, and "Expanded Motion to Dismiss Charges  
10 Because Government Cannot Prove the Essential Elements of Charges Because the Property  
11 Allegedly Damaged Conceals Unlawful Weapons of Mass Destruction," filed on October 29,  
12 2010.

13 Having carefully considered these matters, the Court **GRANTS** the Government's Motion  
14 for a Protective Order in its entirety.

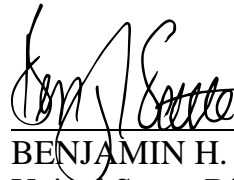
15 On the basis of the Court's independent review of the information and the arguments set  
16 forth in the Government's Motion for a Protective Order, the Court finds that the classified  
17 information referenced in the government's motion implicates the government's national security  
18 and classified information privilege and that the information is properly classified. Furthermore,  
19 the Court finds that none of the classified information is "relevant and helpful," as that standard  
20 is articulated in *United States v. Yunis*, 867 F.2d 617 (D.C. Cir. 1989), to the defense.

21 Moreover, even if the Court were to find that the classified information at issue was  
22 relevant and helpful to the defense, the Court would still grant the government's motion because  
23 the national security damage from disclosure to the defense, as articulated in the classified  
24 declaration of a United States government official, outweighs the defendants' need for the  
25 classified information at issue. *See United States v. Sarkissian*, 841 F.2d 959, 965 (9th Cir.  
26 1988).

1 Accordingly, **IT IS ORDERED** that the government is authorized to withhold from  
2 discovery to the defense the information and documents sought by the defendants in the  
3 requests, numbered 1, 3, 4, and 5, they submitted to the government in an email on November 4,  
4 2010.

5 **IT IS FURTHER ORDERED** that the Government's Motion for a Protective and the  
6 accompanying declaration and exhibits shall not be disclosed to the defense, and shall be Sealed  
7 and maintained in a facility appropriate for the storage of such classified information by the  
8 Court Security Officer as the designee of the Clerk of Court, in accordance with established  
9 security procedures, for any future review, until further order of this Court.

10 **IT IS SO ORDERED**, this 17<sup>th</sup> day of November 2010.

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14 BENJAMIN H. SETTLE  
15 United States District Judge  
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